

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>10-O-06590-LMA</b>
	)	(11-O-11548; 11-O-11815;
<b>TIMOTHY CLARENCE BRYSON,</b>	)	11-O-15734)
	)	
<b>Member No. 140798,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<u>A Member of the State Bar.</u>	)	<b>ENROLLMENT</b>

In this four-client matter, respondent Timothy Clarence Bryson (respondent) was charged with (1) improperly accepting an advanced fee and failing to provide adequate notifications in a loan modification matter (two counts); (2) failing to deposit and maintain client funds in trust (two counts); (3) improperly withdrawing disputed funds from trust; (4) failing to promptly disburse or return client funds (two counts); (5) failing to account; (6) failing to cooperate in a disciplinary investigation; (7) failing to perform legal services with competence; (8) charging an illegal fee; and (9) misappropriation (two counts). Respondent appeared at the initial status conference, but subsequently failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 7, 1989, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On December 5, 2011, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service did not return the NDC as undeliverable or for any other reason.

On January 17, 2012, the court held an initial status conference. Respondent and the State Bar both appeared by telephone. Respondent had yet to file a response to the NDC, but acknowledged receiving it. The court gave respondent additional time to file his response, ordering that it be filed by January 27, 2012.

Respondent subsequently failed to file a response to the NDC. On February 6, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

diligence by the State Bar deputy trial counsel noting respondent's participation at the initial status conference and acknowledgement of receipt of the NDC. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on February 22, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On August 30, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that (1) it has had no contact with respondent since the default was entered; (2) there are four other disciplinary matters pending against respondent; (3) respondent has three prior records of discipline; and (4) the Client Security Fund has not paid out on any claims resulting from respondent's prior misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on September 25, 2012.

Respondent has been disciplined on three prior occasions.<sup>3</sup> Pursuant to a Supreme Court order filed on October 24, 2001, respondent was suspended for 30 days, the execution of which was stayed, and he was placed on probation for one year. In this single-client matter, respondent

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<sup>3</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

stipulated to misconduct involving his failing to competently perform and supervise legal services, resulting in his client's deportation.

Pursuant to a Supreme Court order filed on January 19, 2011, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years. In this single-client matter, respondent stipulated to misconduct including failing to respond to client inquiries, failing to adequately supervise his employee, and failing to maintain his current office address and telephone number with the State Bar.

Pursuant to a Supreme Court order filed on May 22, 2012, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, including a 120-day period of suspension. In this matter, respondent stipulated to misconduct involving his failure to comply with conditions attached to his disciplinary probation.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 10-O-06590 (The Brown and Rodriguez Matter)**

Count One – respondent willfully violated Business and Professions Code section 6106.3, subdivision (a) (violation of Civil Code sections 2944.6 or 2944.7) by collecting advanced fees prior to completing all services in a loan modification matter.

Count Two – respondent willfully violated Business and Professions Code section 6106.3, subdivision (a) by failing to provide his clients adequate notice that they can deal

directly with their lender and it is not necessary to pay a third party to negotiate a loan modification matter.

**Case Number 11-O-11548 (The Magtayn Matter)**

Count Three – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust) by not maintaining \$9,320.01 in client funds in his client trust account.

Count Four – respondent willfully violated rule 4-100(A)(2) of the Rules of Professional Conduct (failure to maintain disputed funds in trust) by not maintaining \$4,683.65 in disputed fees in his client trust account.

Count Five – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay client funds) by failing to release all non-disputed funds upon his client’s request.

Count Six – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to account) by failing to provide his client with an accounting.

Count Seven – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$9,320.01.

Count Eight – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in a disciplinary investigation) by failing to provide a written response to two investigative letters respondent received from the State Bar.

**Case Number 11-O-15734 (The Torres Matter)**

Count Nine – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to deposit \$2,000 in funds held for the benefit of his client into a client trust account.

Count Ten – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to return \$2,000 in client funds upon the client’s request.

Count Eleven – respondent willfully violated Business and Professions Code section 6106 by misappropriating client funds in the amount of \$2,000.

**Case Number 11-O-11815 (The White Matter)**

Count Twelve – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to cure defects in his client’s probate petition, failing to appear for a hearing, and failing to take any further steps to probate his client’s matter.

Count Thirteen – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by receiving \$2,000 in advanced fees in a probate matter without court authorization, pursuant to California Rules of Court, rule 7.700(a).

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of the proceedings prior to the entry of his default, as he was properly served with a copy of the NDC, participated in the initial status conference, acknowledged receipt of the NDC, and was given an extension of time to file a response to the NDC;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Timothy Clarence Bryson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Mohamud Magtayn in the amount of \$9,320.01 plus 10 percent interest per year from December 29, 2010;
- (2) Luis Torres in the amount of \$2,000 plus 10 percent interest per year from August 11, 2010; and
- (3) Pauline White in the amount of \$2,000 plus 10 percent interest per year from September 22, 2008.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Timothy Clarence Bryson, State Bar number 140798, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November \_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court